

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11206 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VISWHNUBHAI SHAMBHUBHAI RABARI (DESAI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11206 of 2003
MS JAYSHREE C BHATT for Petitioner No. 1
Ms MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

5.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was branded as 'dangerous person'.

The grounds placed on record and as served upon the petitioner reveal that the detaining authority took into consideration five offences registered against the petitioner. The offence on 18.8.2002 came to be registered against the petitioner under sec. 392, 294(b) and 114 of IPC for robbery of Rs. 12000/-. The second offence came to be registered on 2.12.2002 under sec. 384, 365, 452, 323, 294(b), 506(2) and 114 of IPC and under sec. 135(1) of the BP Act, wherein it was alleged that son of the complainant was kidnapped. The offence registered on 14.12.2002 was under sec. 394, 397, 114 and 452 of IPC, wherein the allegation was the petitioner along with his associates forcibly entered in the house of the complainant and robbed Rs. 38000/- and caused injuries to the complainant. The offence registered on 30.12.2002 was under sec. 323, 342, 506(2) and 114 of IPC, wherein the complainant was beaten by the petitioner. The fifth and last offence came to be registered against the petitioner on 6.1.2003 under sec. 452, 354, 506(1) and 114 of IPC. There the allegation was that the petitioner forcibly entered in the Girls hostel and misbehaved with the girls. The detaining authority relied upon the material of these cases. In addition to this, the detaining authority also relied upon the in-camera statements as recorded by the sponsoring authority on 29.4.2003 and verified by the detaining authority on 2.5.2003. The statements revealed the incidents took place on 18.12.2002 and 31.12.2002. From the above material, the order impugned came to be passed by the detaining authority.

The petitioner moved civil application for amending this special civil application to add para-12(A), 12(B) and 12(C) in the main special civil application. The said civil application was moved for the amendment was granted by this court on 8.10.2003.

Heard ld. Advocate Ms. JC Bhatt for the petitioner and Ms. Panchal ld. AGP for the respondents. The affidavit in reply as filed by the detaining authority affirmed on 28.8.2003 and further affidavit to the amendments in special civil application sworn in by the detaining authority on 13.10.2003 as placed on record are taken into consideration. The affidavit filed by the

Under Secretary to the Government sworn in on 13.10.2003 as placed on record by ld. AGP is also taken into consideration.

Out of various contentions, the matter can be disposed of on the ground whether there is any delay in passing the order. It has been urged that the last offence came to be registered against the petitioner on 6.1.2003 and the order impugned came to be passed on 5.5.2003 causing delay of about four months in passing the order and, therefore, this unexplained delay is fatal for further detention of the petitioner. On this plea of the petitioner while going through the record, it clearly transpires that the last offence came to be registered on 6.1.2003 but the order came to be passed on 5.5.2003. In between the only incident occurred was recording of the in-camera statements by the sponsoring authority on 29.4.2003 as verified by the detaining authority on 2.5.2003. Though the incidents revealed by the witnesses were prior to the last date of registration of crime against the petitioner i.e. 6.1.2003, in this respect, my attention was drawn to the further affidavit in reply filed by the detaining authority. The detaining authority has attempted to explain this delay and has stated that on 6.1.2003 when the offence came to be registered against the petitioner, the petitioner was in judicial custody in the said offence from 9.1.2003. On 15.1.2003, the petitioner filed bail application with respect to this CR No. 399/2002. The matter was heard by the ld. Sessions Judge on 17.1.2003 and ultimately the bail application of the petitioner came to be rejected on the same date. So, according to the detaining authority, the petitioner was in judicial custody from 9.1.2003. During this period, the petitioner was already in judicial custody as far as the offences which were registered against him i.e. offence no. 2 and 4. The detaining authority further explained that since the petitioner was in judicial custody, there was no necessity for passing the detention order against the petitioner. But, thereafter, on 15.3.2003, the petitioner came to be registered in the crime registered against him at sr. no. 2 and 4 by the competent court on 15.3.2003. Though the petitioner was in judicial custody, in respect of the offence mentioned at sr. no. 3 in the grounds of detention because the bail application came to be rejected by the ld. Sessions Judge, as aforesaid. The detaining authority as per the explanation, in the month of April, 2003, the petitioner approached the High Court with a bail application for the offence mentioned at sr. no. 3 and since in other two offences, the petitioner was released on bail, the

detaining authority apprehended that the High Court may release the petitioner on bail and since he was already on bail for the offence mentioned at sr. no. 2 and 4. The sponsoring authority recorded the statements of two witnesses on 29.4.2003 and after verifying the statements, the order came to be passed on 5.5.2003. Thereafter, according to the above explanation of the detaining authority, there is no delay in passing the order of detention.

From the rival contentions, it appears that the question is whether the explanation offered by the detaining authority for the passing of the order of detention after four months from the date of registration of the last offence is satisfactory or not. Law as it stands today is, delay ipso facto, in passing the order of detention is not fatal to the detention of a person. This is so because delay may be explainable and reasonable and unavoidable in the given circumstances. The requirement of law is that the delay must be satisfactorily explained by the detaining authority. The facts of this case clearly revealed that the explanation offered by the detaining authority in passing of the order of detention is not satisfactorily explained. The established law is that the order of detention can be passed even if the petitioner is in judicial custody, only that in such cases the detaining authority is expected to reach to subjective satisfaction on a cogent material that the petitioner was likely to be released on bail and he was likely to continue his illegal activities. When the objectional activities is prejudicial to the public order and when there is no other alternative except invoking the detention law to prevent such activities then the mandate of law is the authority should move on day to day basis, otherwise, the balance between liberty of citizen and the interest of society would not be maintained. The explanation that since the petitioner was in judicial custody and only when he approached the higher forum with a bail application thereupon on apprehension of his being released on bail by the High court, the order of detention came to be passed is the explanation in the circumstances of the case, is far from satisfaction. The reason being simple that as aforesaid firstly, the preventive action is required to be taken irrespective of the fact that the petitioner is under judicial custody or not and the detaining authority is not bound by the circumstances that the petitioner is in judicial custody and that therefore the detaining authority cannot pass the order of detention. It clearly appears in this case that the authorities have attempted to give life to stale

cases and recorded the in-camera statements only on 29.4.2003. This is not permissible in law and though there are serious allegations against the petitioner, his detention is required to be declared bad on account of delay in passing the order of detention on 5.5.2003. When nothing prevented the detaining authority to pass the order of detention earlier. However, the allegations against the petitioner is serious, but it is always necessary to strike balance between the personal liberty of the citizen as guaranteed under the Constitution of India and the larger interest of the society. However, grave the allegations may be than more care is required to be taken by striking the balance, as aforesaid. In this view of the matter, the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 5.5.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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